

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

United States of America)	
)	CR No.: 0:98-412-JFA
)	
v.)	ORDER DENYING MOTION
)	TO REDUCE SENTENCE
Thomas William Owings)	
_____)	

This matter is before the court on defendant’s motion to modify his sentence pursuant to 18 U.S.C. § 3582. Mr. Owings asserts that he is 82 years old with chronic obstructive pulmonary disease, emphysema, high blood pressure, and heart disease and has served approximately 8 years of his 15-year sentence.

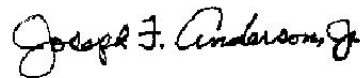
Section 3582(c)(1)(B) allows modification “to the extent otherwise expressly permitted by statute or by Rule 35 of the Federal Rules of Criminal Procedure.” The government argues that the court is without authority to modify the sentence under § 3582(c)(1)(B) because the government has not filed a motion for a reduction of sentence under Rule 35, the defendant has not identified a statute which permits the court to modify the sentence, and the Sentencing Commission has not lowered the defendant’s sentencing range.

Section 3582(c)(2) allows for modification of a sentence when the sentencing range “has subsequently been lowered by the Sentencing Commission.” There are two requirements for modification under § 3582(c)(2): (1) there was a change in the relevant sentencing

guideline that reduces the sentencing range; and (2) the guidelines permit retroactive application of the change.

For the reasons contained herein, petitioner's motion to modify his sentence is respectfully denied.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.
United States District Judge

May 1, 2006
Columbia, South Carolina